



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,799	03/30/2005	Lee Ann Olson	2866(203-3509)	5362
50855	7590	03/07/2008		
COVIDIEN 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER LOPEZ, MICHELLE	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 03/07/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,799	<b>Applicant(s)</b> OLSON ET AL.	
	<b>Examiner</b> Michelle Lopez	<b>Art Unit</b> 3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-36,39-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-36,39-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to applicant's after final amendment received on 12/16/07.

Upon further considerations the indicated allowability of claims 33-36 and 39-41 is hereby withdrawn. Accordingly, the finality of the office action mailed on 11/14/07 is hereby also withdrawn.

2. The terminal disclaimer received on 12/16/07 was approved and the Double Patenting Rejection of claim 32 is vacated.

3. Claims 21-31 and 37-38 have been canceled.

### ***Inventorship***

4. In view of the papers filed 12/19/07, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding inventors Philip Roy, John W. Beardsley, and David C. Racenet.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 32-34, 36, and 39-41 are rejected under 35 U.S.C. 103(a) as being obvious over Fontayne (5,485,952) in view of Bolanos et al. (5,897,562).

6. Fontayne discloses the claimed tool assembly comprising an anvil and a cartridge assembly, the cartridge having a plurality of staples and being movable in relation to the anvil between an open and an approximated position, the cartridge and anvil defining a tissue gap in the approximated position as shown in fig. 12; a clamp collar 90 being movable between a first and a second position to effect movement of the anvil in relation to the cartridge from the open position as shown in fig. 8 towards the approximated position as shown in fig. 10, wherein in the second position the clamp collar 90 is positioned about the proximal ends of the cartridge and anvil assemblies; a dynamic clamping member 280 movably positioned in relation to the anvil and cartridge assembly from a first position as shown in fig. 12 to a second position as shown in fig. 14.

7. The language in claim 32, lines 12-14, “to define a maximum tissue gap ... adjacent the dynamic clamping member during ejection of the plurality of staples” is functional and afforded little weight because it is predicated on a future act. Furthermore, the functional language is not supported by sufficient structure. In order to be given patentable weight, a functional recitation must be expressed as a “means” for performing the specified function, as set forth in 35 U.S.C. 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language.

8. While Fontayne shows a flexible actuator link 155 operatively associated to the dynamic clamping member to effect movement of said clamping member between a first and a second position, Fontayne fails to disclose at least one pulley mechanism to effect movement of said

Art Unit: 3721

clamping member. Bolanos shows a surgical tool assembly having a pulley mechanism 48a-48c operatively associated with a driver (see figs. 3-4) for the purpose of driving said driver by a cable. The modification of Fontayne's by substituting a pulley mechanism such as shown by Bolanos would have been obvious because the substitution of one known and equivalent mechanism (a pulley mechanism) for another (a flexible actuator link) would have yielded predictable results to one of ordinary skill in the art at the time of the invention and the technique for improving a particular class of devices was part of the ordinary capabilities of a person skill in the art.

9. Fontayne also discloses a plurality of staples that are aligned in a plurality of linear rows as shown in fig. 4. A sled 276 which is movable with the dynamic clamping member through the cartridge.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fontayne (5,485,952) in view of Bolanos as applied to claim 32 above, and further in view of Milliman (5,865,361).

11. The modified invention of Fontayne discloses a dynamic clamping member with a mechanical interface 289 which slidingly engages the cartridge assembly, but fails to disclose a mechanical interface which slidingly engages the anvil assembly. Milliman shows a tool assembly 17 including an anvil 20, a cartridge 18, and a dynamic clamping member with a first and a second mechanical interface as claimed (see Figs. 45, 49, 51-52) for the purpose of press together the anvil and cartridge assembly to uniformly maintain a gap between tissue contacting the anvil and the cartridge during stapling. It would have been obvious to one having ordinary skill in the art to have provided the modified invention of Fontayne with a dynamic clamping

Art Unit: 3721

member having a first and second mechanical interfaces as taught by Milliman to maintain a uniform gap between tissue contacting the anvil and the cartridge during stapling.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the attached PTO-892 for related art.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ML/

Patent Examiner

/Rinaldi I Rada/

Supervisory Patent Examiner, Art Unit 3721